

SUBCHAPTER A : GENERAL FINANCIAL ASSURANCE REQUIREMENTS

§37.1. Applicability.

This chapter applies to an owner or operator required by this chapter to provide evidence of financial responsibility. However, this chapter does not apply to owners and operators which are state or federal government entities whose debts and liabilities are the debts and liabilities of a state or the United States.

Adopted December 4, 1996

Effective December 30, 1996

§37.11. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

Assets - All existing and all probable future economic benefits obtained or controlled by a particular entity.

Current assets - Cash or other assets or resources commonly identified as those which are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business.

Current closure cost estimate - The most recent of the estimates prepared for closure and approved by the executive director.

Current liabilities - Obligations whose liquidation is reasonably expected to require the use of existing resources properly classifiable as current assets or the creation of other current liabilities.

Current plugging and abandonment cost estimate - The most recent of the estimates prepared in accordance with Chapter 331 of this title (relating to Underground Injection Control).

Face amount - The total amount the insurer is obligated to pay under an insurance policy.

Financial responsibility - This term shall mean the same as financial assurance.

Independent audit - An audit performed by an independent certified public accountant in accordance with generally accepted auditing standards.

Liabilities - Probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.

Net working capital - Current assets minus current liabilities.

Net worth - Total assets minus total liabilities and equivalent to owner's equity.

Standby trust - An unfunded trust established to meet the requirements of this chapter.

Tangible net worth - The tangible assets that remain after deducting liabilities; such assets would not include intangibles such as goodwill and rights to patents or royalties.

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§37.21. Wording and Approval of Mechanisms.

The mechanisms submitted for compliance with this chapter must be worded as they appear in Subchapter D or G of this chapter (relating to Wording of the Mechanisms for Closure or Wording of the Mechanisms for Liability). The executive director shall determine the acceptability of the mechanisms submitted.

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§37.31. Submission of Documents.

(a) To receive approval as a permitted facility, an owner or operator required by this chapter to provide evidence of financial responsibility must submit an originally signed financial assurance mechanism 60 days prior to acceptance of waste or 60 days prior to beginning operations, whichever occurs first.

(b) To receive approval as a registered facility, an owner or operator required by this chapter to provide evidence of financial responsibility must submit originally signed financial assurance mechanisms prior to issuance of registration.

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§37.41. Use of Multiple Financial Assurance Mechanisms.

An owner or operator may satisfy the requirements of this chapter by establishing more than one financial assurance mechanism per facility. The executive director may use any or all of the mechanisms to satisfy the requirements for which financial assurance was provided. These mechanisms are limited to those specified in Subchapter C of this chapter (relating to Financial Assurance Mechanisms for Closure) or Subchapter F of this chapter (relating to Financial Assurance Mechanisms for Liability), except that the financial test or corporate guarantee may not be combined with other mechanisms, provided the mechanisms are for the same facility.

(1) It shall be the combination of mechanisms, rather than the single mechanism, which shall provide financial assurance for an amount that must be at least equal to the minimum financial assurance requirements of this chapter.

(2) If an owner or operator uses a trust fund in combination with a surety bond or irrevocable standby letter of credit, the owner or operator may use that trust fund as the standby trust fund for the other mechanisms.

(3) A single standby trust may be established for two or more mechanisms.

(4) If an owner or operator demonstrates the required liability coverage through the use of a combination of financial assurance mechanisms, the owner or operator shall specify at least one such assurance as "primary" coverage and shall specify other assurance as "excess."

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§37.51. Use of a Financial Assurance Mechanism for Multiple Facilities.

An owner or operator may use a financial assurance mechanism as specified in this chapter to meet the requirements of this chapter for more than one facility, provided that the facilities are of the same type. Evidence of financial assurance submitted to the executive director shall include a list showing, for each facility, the commission registration or permit number, name, address, and the amount of funds assured by the mechanism. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility. In directing funds available through the mechanism for closure of any of the facilities covered by the mechanism, the executive director may direct only the amount of funds designated for that facility.

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§37.61. Termination of Mechanisms.

The executive director shall provide written consent to termination of a financial assurance mechanism when:

(1) an owner or operator substitutes and receives approval from the executive director for alternate financial assurance as specified in this chapter; or

(2) the executive director releases the owner or operator from the requirements of this chapter.

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§37.71. Incapacity of Owners or Operators, Guarantors, or Financial Institutions.

(a) An owner or operator must notify the executive director by certified mail of the commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), United States Code, naming the owner or operator as debtor, within ten business days after the commencement of the proceeding. As required under the terms of the guarantee, a guarantor of a corporate guarantee as specified in §37.261 of this title (relating to Corporate Guarantee for Closure) and a corporate guarantee as specified in §37.551 of this title (relating to Corporate Guarantee for Liability) shall make such a notification if he is named as debtor.

(b) An owner or operator who fulfills the requirements of this chapter shall be deemed to be without the required financial assurance coverage in the event of bankruptcy of the trustee or issuing institution, or a suspension or revocation of the authority of the trustee institution to act as trustee or of the institution issuing

the surety bond, irrevocable standby letter of credit, or insurance policy to issue such mechanisms. The owner or operator must establish other acceptable financial assurance within 60 days after such an event.

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§37.81. Transfer of Ownership or Operational Control.

When a transfer of ownership or operational control occurs, the old owner or operator shall comply with the requirements of this chapter, until the executive director determines that the new owner or operator has demonstrated compliance with the requirements of this chapter. Upon determination by the executive director that the new owner or operator is in compliance with this chapter, the executive director shall provide written consent to termination of the financial assurance mechanism to the old owner or operator in accordance with §37.61 of this title (relating to Termination of Mechanisms).

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